

EN BANC

[G.R. No. 197676, February 04, 2014]

**REMMAN ENTERPRISES, INC. AND CHAMBER OF REAL ESTATE
AND BUILDERS' ASSOCIATION, PETITIONERS, VS.
PROFESSIONAL REGULATORY BOARD OF REAL ESTATE SERVICE
AND PROFESSIONAL REGULATION COMMISSION,
RESPONDENTS.**

DECISION

VILLARAMA, JR., J.:

Assailed in this petition for review under Rule 45 is the Decision^[1] dated July 12, 2011 of the Regional Trial Court (RTC) of Manila, Branch 42 denying the petition to declare as unconstitutional Sections 28(a), 29 and 32 of Republic Act (R.A.) No. 9646.

R.A. No. 9646, otherwise known as the "Real Estate Service Act of the Philippines" was signed into law on June 29, 2009 by President Gloria Macapagal-Arroyo. It aims to professionalize the real estate service sector under a regulatory scheme of licensing, registration and supervision of real estate service practitioners (real estate brokers, appraisers, assessors, consultants and salespersons) in the country. Prior to its enactment, real estate service practitioners were under the supervision of the Department of Trade and Industry (DTI) through the Bureau of Trade Regulation and Consumer Protection (BTRCP), in the exercise of its consumer regulation functions. Such authority is now transferred to the Professional Regulation Commission (PRC) through the Professional Regulatory Board of Real Estate Service (PRBRES) created under the new law.

The implementing rules and regulations (IRR) of R.A. No. 9646 were promulgated on July 21, 2010 by the PRC and PRBRES under Resolution No. 02, Series of 2010.

On December 7, 2010, herein petitioners Remman Enterprises, Inc. (REI) and the Chamber of Real Estate and Builders' Association (CREBA) instituted Civil Case No. 10-124776 in the Regional Trial Court of Manila, Branch 42. Petitioners sought to declare as void and unconstitutional the following provisions of R.A. No. 9646:

SEC. 28. Exemptions from the Acts Constituting the Practice of Real Estate Service. – The provisions of this Act and its rules and regulations shall not apply to the following:

(a) Any person, natural or juridical, who shall directly perform by himself/herself the acts mentioned in Section 3 hereof with reference to his/her or its own property, **except real estate developers;**

x x x x

SEC. 29. *Prohibition Against the Unauthorized Practice of Real Estate Service* . – No person shall practice or offer to practice real estate service in the Philippines or offer himself/herself as real estate service practitioner, or use the title, word, letter, figure or any sign tending to convey the impression that one is a real estate service practitioner, or advertise or indicate in any manner whatsoever that one is qualified to practice the profession, or be appointed as real property appraiser or assessor in any national government entity or local government unit, unless he/she has **satisfactorily passed the licensure examination** given by the Board, except as otherwise provided in this Act, **a holder of a valid certificate of registration**, and **professional identification card or a valid special/temporary permit** duly issued to him/her by the Board and the Commission, and in the case of real estate brokers and private appraisers, they have **paid the required bond** as hereto provided.

x x x x

SEC. 32. *Corporate Practice of the Real Estate Service* . – (a) No partnership or corporation shall engage in the business of real estate service unless it is duly registered with the Securities and Exchange Commission (SEC), and the **persons authorized to act for the partnership or corporation are all duly registered and licensed real estate brokers, appraisers or consultants**, as the case may be. The partnership or corporation shall regularly submit a list of its real estate service practitioners to the Commission and to the SEC as part of its annual reportorial requirements. There shall at least be one (1) licensed real estate broker for every twenty (20) accredited salespersons.

(b) Divisions or departments of partnerships and corporations engaged in marketing or selling any real estate development project in the regular course of business must be headed by **full-time registered and licensed real estate brokers**.

(c) Branch offices of real estate brokers, appraisers or consultants must be manned by a duly licensed real estate broker, appraiser or consultant as the case may be.

In case of resignation or termination from employment of a real estate service practitioner, the same shall be reported by the employer to the Board within a period not to exceed fifteen (15) days from the date of effectivity of the resignation or termination.

Subject to the provisions of the Labor Code, a corporation or partnership may hire the services of registered and licensed real estate brokers, appraisers or consultants on commission basis to perform real estate services and the latter shall be deemed independent contractors and not employees of such corporations. (Emphasis and underscoring supplied.)

According to petitioners, the new law is constitutionally infirm because (1) it violates Article VI, Section 26 (1) of the 1987 Philippine Constitution which mandates that

"[e]very bill passed by Congress shall embrace only one subject which shall be expressed in the title thereof"; (2) it is in direct conflict with Executive Order (E.O.) No. 648 which transferred the exclusive jurisdiction of the National Housing Authority (NHA) to regulate the real estate trade and business to the Human Settlements Commission, now the Housing and Land Use Regulatory Board (HLURB), which authority includes the issuance of license to sell of subdivision owners and developers pursuant to Presidential Decree (P.D.) No. 957; (3) it violates the due process clause as it impinges on the real estate developers' most basic ownership rights, the right to use and dispose property, which is enshrined in Article 428 of the Civil Code; and (4) Section 28(a) of R.A. No. 9646 violates the equal protection clause as no substantial distinctions exist between real estate developers and the exempted group mentioned since both are property owners dealing with their own property.

Additionally, petitioners contended that the lofty goal of nurturing and developing a "corps of technically competent, reasonable and respected professional real estate service practitioners" is not served by curtailing the right of real estate developers to conduct their business of selling properties. On the contrary, these restrictions would have disastrous effects on the real estate industry as the additional cost of commissions would affect the pricing and affordability of real estate packages. When that happens, petitioners claimed that the millions of jobs and billions in revenues that the real estate industry generates for the government will be a thing of the past.

After a summary hearing, the trial court denied the prayer for issuance of a writ of preliminary injunction.

On July 12, 2011, the trial court rendered its Decision^[2] denying the petition. The trial court held that the assailed provisions are relevant to the title of the law as they are intended to regulate the practice of real estate service in the country by ensuring that those who engage in it shall either be a licensed real estate broker, or under the latter's supervision. It likewise found no real discord between E.O. No. 648 and R.A. No. 9646 as the latter does not render nugatory the license to sell granted by the HLURB to real estate developers, which license would still subsist. The only difference is that by virtue of the new law, real estate developers will now be compelled to hire the services of one licensed real estate broker for every twenty salespersons to guide and supervise the coterie of salespersons under the employ of the real estate developers.

On the issue of due process, the trial court said that the questioned provisions do not preclude property owners from using, enjoying, or disposing of their own property because they can still develop and sell their properties except that they have to secure the services of a licensed real estate broker who shall oversee the actions of the unlicensed real estate practitioners under their employ. Since the subject provisions merely prescribe the requirements for the regulation of the practice of real estate services, these are consistent with a valid exercise of the State's police power. The trial court further ruled that Section 28(a) does not violate the equal protection clause because the exemption of real estate developers was anchored on reasonable classification aimed at protecting the buying public from the rampant misrepresentations often committed by unlicensed real estate practitioners, and to prevent unscrupulous and unethical real estate practices from flourishing considering the large number of consumers in the regular course of business

compared to isolated sale transactions made by private individuals selling their own property.

Hence, this appeal on the following questions of law:

1. Whether there is a justiciable controversy for this Honorable Court to adjudicate;
2. Whether [R.A. No. 9646] is unconstitutional for violating the "one title-one subject" rule under Article VI, Section 26 (1) of the Philippine Constitution;
3. Whether [R.A. No. 9646] is in conflict with PD 957, as amended by EO 648, with respect to the exclusive jurisdiction of the HLURB to regulate real estate developers;
4. Whether Sections 28(a), 29, and 32 of [R.A. No. 9646], insofar as they affect the rights of real estate developers, are unconstitutional for violating substantive due process; and
5. Whether Section 28(a), which treats real estate developers differently from other natural or juridical persons who directly perform acts of real estate service with reference to their own property, is unconstitutional for violating the equal protection clause.^[3]

The Court's Ruling

The petition has no merit.

Justiciable Controversy

The Constitution^[4] requires as a condition precedent for the exercise of judicial power the existence of an actual controversy between litigants. An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims susceptible to judicial resolution.^[5] The controversy must be justiciable – definite and concrete – touching on the legal relations of parties having adverse legal interests, which may be resolved by a court of law through the application of a law.^[6] In other words, the pleadings must show an active antagonistic assertion of a legal right, on the one hand, and a denial thereof on the other; that is, it must concern a real and not a merely theoretical question or issue. There ought to be an actual and substantial controversy admitting of specific relief through a decree conclusive in nature, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.^[7] An actual case is ripe for adjudication when the act being challenged has a direct adverse effect on the individual challenging it.^[8]

There is no question here that petitioners who are real estate developers are entities directly affected by the prohibition on performing acts constituting practice of real estate service without first complying with the registration and licensing requirements for brokers and agents under R.A. No. 9646. The possibility of criminal

sanctions for disobeying the mandate of the new law is likewise real. Asserting that the prohibition violates their rights as property owners to dispose of their properties, petitioners challenged on constitutional grounds the implementation of R.A. No. 9646 which the respondents defended as a valid legislation pursuant to the State's police power. The Court thus finds a justiciable controversy that calls for immediate resolution.

No Violation of One-Title One-Subject Rule

Section 26(1), Article VI of the Constitution states:

SEC. 26 (1). Every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof.

In *Fariñas v. The Executive Secretary*,^[9] the Court explained the provision as follows:

The proscription is aimed against the evils of the so-called omnibus bills and log-rolling legislation as well as surreptitious and/or unconsidered encroachments. The provision merely calls for all parts of an act relating to its subject finding expression in its title.

To determine whether there has been compliance with the constitutional requirement that the subject of an act shall be expressed in its title, the Court laid down the rule that –

Constitutional provisions relating to the subject matter and titles of statutes should not be so narrowly construed as to cripple or impede the power of legislation. **The requirement that the subject of an act shall be expressed in its title should receive a reasonable and not a technical construction. It is sufficient if the title be comprehensive enough reasonably to include the general object which a statute seeks to effect, without expressing each and every end and means necessary or convenient for the accomplishing of that object.** Mere details need not be set forth. The title need not be an abstract or index of the Act.^[10] (Emphasis supplied.)

The Court has previously ruled that the one-subject requirement under the Constitution is satisfied if all the parts of the statute are related, and are germane to the subject matter expressed in the title, or as long as they are not inconsistent with or foreign to the general subject and title.^[11] An act having a single general subject, indicated in the title, may contain any number of provisions, no matter how diverse they may be, so long as they are not inconsistent with or foreign to the general subject, and may be considered in furtherance of such subject by providing for the method and means of carrying out the general object.^[12]

It is also well-settled that the "one title-one subject" rule does not require the Congress to employ in the title of the enactment language of such precision as to mirror, fully index or catalogue all the contents and the minute details therein. The rule is sufficiently complied with if the title is comprehensive enough as to include